MINUTES

INDIANA STATE BOARD OF DENTAL EXAMINERS

NOVEMBER 2, 2007

I. CALL TO ORDER AND ESTABLISHMENT OF QUORUM

Dr. Burns called the meeting to order at 9:00 a.m. in the Professional Licensing Agency, Conference Room W064, Indiana Government Center South, 402 West Washington Street, Indianapolis, Indiana, and declared a quorum in accordance with Indiana Code § 15-5-1.1-6(c).

Board Members Present:

Jill Burns, D.D.S., President
Laverne Whitmore, L.D.H. B.S., Vice President
Galen Williams, D.D.S., Secretary
Matthew Miller, D.D.S.
Richard T. Newton, II, D.D.S.
Gary Haller, D.D.S.
Theodore Rokita, D.D.S.
Philip Catey, D.D.S.
Steven Hollar, D.D.S.
Clance LaTurner, Consumer Member

State Officials Present:

Cindy Vaught, Board Director, Professional Licensing Agency Kristine Yarde, Assistant Board Director, Professional Licensing Agency Liz Brown, Deputy Attorney General, Office of the Attorney General

II. ADOPTION OF THE AGENDA

A motion was made and seconded to adopt the agenda, as amended.

WILLIAMS/LaTURNER
Motion carried 11-0-0

III. ADOPTION OF THE MINUTES FROM THE OCTOBER 5, 2007 MEETING OF THE BOARD

A motion was made and seconded to adopt the minutes of the October 5, 2007 meeting of the Board.

WHITMORE/MILLER Motion carried 11-0-0

IV. INSPECT PROGRAM

A. INSPECT Presentation

Todd Kinney, Director of INSPECT, gave a presentation to the Board about the purpose of the INSPECT Program informing them how to register and use the program, what functions and capabilities the program offers, and the future applications the system will have.

V. APPEARANCES

A. PROBATIONARY

State of Indiana v. Teresa Michelle McCrady, D.D.S., License No. 12010271A Administrative Cause No. 2006 DB 0003

Dr. McCrady appeared before the Board, as requested, regarding her ongoing probationary status. She reported that things are going well personally and professionally.

B. APPLICATION

There were no scheduled appearances for applicants.

C. RENEWAL

There were no scheduled appearances for renewals.

VI. ADMINISTRATIVE HEARINGS

A. State of Indiana v. Marci L. Huth, L.D.H. License No. 13002773A

Administrative Cause No. 2006 DB 0005

Re: Final Hearing

Parties and Counsel Present:

Respondent was present and was represented by Counsel Chad Hanefield Laura Wilford, Deputy Attorney General for the State of Indiana Sherry Rutledge, Court Reporter

Participating Board Members:

Dr. Burns (Hearing Officer)

Ms. Whitmore, L.D.H., B.S. (Hearing Officer)

Dr. Williams

Ms. LaTurner

Dr. Newton

Dr. Miller

Dr. Heape

Dr. Hollar

Dr. Catev

Dr. Rokita

Dr. Haller

*Dr. Burns recused herself from this matter.

Case Summary: A Complaint was filed on October 18, 2006 by the Office of the Attorney General against the Respondent. The Complaint stated the Respondent was employed as a dental hygienist for Dr. Erik Grothouse, D.D.S. from August 31, 2005 to February 13, 2006. On February 10, 2006 Respondent presented a prescription to Marsh Pharmacy for 20 tablets of Amoxicillin 500mg and 40 tablets of Hydrocodone/ APAP 7.5. The name on the prescription was "Timothy Miller" and Dr. Grothouse was documented as the prescription doctor. Respondent returned to Marsh Pharmacy and paid cash for the prescription. On February 13, 2006 Respondent's employment with Dr. Grothouse was

terminated. Dr. Grothouse denied having a patient "Timothy Miller" and writing a prescription for the same. Respondent admitted that she forged his signature on a prescription and used it to obtain controlled substances. On February 16, 2006 Respondent renewed her Indiana dental hygiene license and answered "no" to all questions including number five (5) which asks, "Since you last renewed, have you been denied staff membership or privileges in any hospital or health care facility or have staff membership privileges been revoked, suspended, or subject to any restriction, probation, or other type of discipline?" The State presented the Board with the following verbal settlement agreement:

- 1. Respondent's Indiana Dental Hygienist license is placed upon INDEFINITE PROBATION for at least six (6) months and shall be subject to the following terms and conditions:
- A. Respondent shall keep the Board apprised of her address and telephone number and shall notify the Board within seventy-two (72) hours of any changes.
- B. Respondent shall keep the Board apprised of the name of he employer and the address and telephone number of her employer and shall notify the Board within seventy-two (72) hours of any changes.
- C. Respondent shall submit monthly supervisory reports from any and all dental employer(s). Said reports should address Respondent's attendance and work performance.
- D. Prior to petitioning for withdrawal of probation, Respondent shall pay a fine, payable to the Indiana Professional Licensing Agency, in the amount of two hundred fifty dollars (\$250).
- Respondent shall receive a letter of reprimand.
- 3. Respondent further understands that a violation of the Final Order, any non-compliance with the statutes or regulations regarding the practice of a dental hygienist, or any violation of the Settlement Agreement may result in the State requesting an emergency suspension of Respondent's license, an Order to Show Cause as may be issued by the Board, or a new cause of action pursuant to Indiana Code §25-1-9-4, any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.

Board Action: A motion was made and seconded to accept the proposed settlement agreement.

WILLIAMS/WHITMORE Motion carried 10-0-0 Dr. Burns recused herself

State of Indiana v. James W. Cahillane, D.D.S., License No. 12007586A
 Administrative Cause No. 2004 DB 0006
 Re: Respondent's Request to Modify Order of Probation

Parties and Counsel Present:

Respondent was present and was not represented by counsel Mark Mader, Deputy Attorney General for the State of Indiana Sherry Rutledge, Court Reporter

Participating Board Members:

Dr. Burns (Hearing Officer) Ms. Whitmore, L.D.H., B.S.

Dr. Williams Ms. LaTurner

Dr. Newton

Dr. Miller

Dr. Heape

Dr. Hollar

Dr. Catev

Dr. Rokita

Dr. Haller

Case Summary: Respondent petitioned the Board for an administrative hearing to modify his probationary order. On February 23, 2005 Respondent's dental license was placed on Indefinite Probation subject to certain terms and conditions. The order states the Respondent may not petition the Board to have the probationary status withdrawn for a period of five (5) years. At this hearing the Respondent explained that he practices in Hobart, Indiana which is a small working class town and the biggest employers are factories. He stated his business has been declining the past two years due to the closing of some factories and people who lack dental benefits through their employment. He is trying to become a recognized practitioner in the PPO networks but states his probationary status has caused him to be denied by the insurance companies. He asked the Board to withdraw his probationary status and to lower the number of personal appearances he is required to make from semi-annually to annually. The Respondent stated he is fully compliant with his recovery and terms and conditions and he is happy and healthy. He stated he would continue to be monitored per his agreement with the Wellness Program. Respondent said Candace Backer who is with the Wellness Program was going to send a letter to the Board attesting to his recovery efforts. The State reiterated that the Respondent has been on probation not quite three (3) years and his order states that he may not request to have his probation withdrawn for a minimum of five (5) years. The State expressed opposition to the Respondent's request in that the probation order was drafted as such due to the serious circumstances that existed at that time and reminded the Board that as long as the Respondent is on probation and subject to the terms and conditions that are required then they have some control in seeing to his recovery.

Board Action: A motion was made and seconded to modify Respondent's probation order to allow annual personal appearances instead of semi-annual appearances. Respondent's request to withdrawal the probationary status was denied. Dr. Cahillane's next personal appearance will be scheduled for November 2008.

MILLER/NEWTON Motion carried 11-0-0

C. State of Indiana v. Robert D. Lucus, D.D.S., License No. 12006620A
Administrative Cause No. 2003 DB 0005
Re: Final Hearing

Parties and Counsel Present:

The Respondent was present and was represented by Counsel Jim Voyles Mark Mader, Deputy Attorney General for the State of Indiana Sherry Rutledge, Court Reporter

Participating Board Members:

Dr. Burns

Ms. LaTurner

Dr. Miller

Dr. Newton

Dr. Haller

Dr. Hollar

Dr. Heape

Dr. Rokita

Dr. Catev

*Dr. Burns and Ms. Whitmore, L.D.H., B.S. abstained

Case Summary: The State and Respondent's counsel made an oral motion to continue this matter until the January 4, 2008 meeting. Respondent's counsel entered into evidence exhibit #1 which is a letter from Candace Backer, Director of the Wellness Program. Respondent's counsel would like Ms. Backer to be present to testify for the Respondent.

Board Action: A motion was made and seconded to continue the hearing until the January 4, 2008 meeting of the Board.

NEWTON/LaTURNER

Motion carried 9-0-2

Dr. Burns and Ms. Whitmore, L.D.H., B.S. abstained

D. State of Indiana v. Christopher Leonard, D.D.S., License No. 12009363A Administrative Cause No. 2005 DB 0002

Re: Order to Show Cause

Parties and Counsel Present:

Respondent was present and was represented by Counsel Robert Hammerly Mark Mader, Deputy Attorney General for the State of Indiana Sherry Rutledge, Court Reporter

Participating Board Members:

Dr. Burns (Hearing Officer)

Ms. LaTurner

Dr. Newton

Dr. Miller

Dr. Heape

Dr. Hollar

Dr. Catey

Dr. Rokita

Dr. Haller

*Dr. Williams recused himself

Case Summary: On September 11, 2007 the Board issued an Order to Show Cause why the Respondent's license to practice dentistry in the State of Indiana should not be summarily suspended, on an emergency basis, or whether other disciplinary action should be imposed due to noncompliance with the probationary terms as set forth in the Board's Order of November 30, 2005, in that, Respondent agreed that due to the prior history of his wife, Richelle Leonard, obtaining controlled substances by the use of his DEA registration that his wife will no longer work in his office or any office in which he is associated in the practice of dentistry in any capacity. Based upon information submitted from Brian Kehoe, Health Care Excel, Mrs. Leonard was working within the Respondent's office on August 27th and 28th, 2007. Respondent's counsel called Richelle Leonard as a witness. Mrs. Leonard testified that her husband was contacted by Health Care Excel that they were going to conduct an audit of Medicaid files. Respondent's exhibit #1 was entered into evidence which was a list that was faxed to the Respondent's office listing the claims that would be audited. Mrs. Leonard stated she was the office manager at her husband's

practice for fifteen (15) years prior to her husband being placed on probation in November 2005. She stated she was aware of the terms of the probation order but felt she was the only person who had knowledge about the contents of the files and could answer questions for the auditors. She handled the files for the time period being audited which was March 2003 to March 2005. She stated some files were in storage and she was trying to get them gathered and in order for the audit which was to take place at her husband's practice. She testified it did not occur to her to contact her lawyer or the Board to let them know she would be at her husband's practice for this audit. She stated she was there to meet the auditors on August 27th and she had one office set up for the auditors to work in and she sat in the office next to it and read a book. She claims they had four or five questions for her the first day and stated they needed to come back the next day as well so she went back on August 28th. At the conclusion of the audit they asked her to sign a staff exit conference form and she wrote her title as owner, VP. Mrs. Leonard testified she told the auditors she did not work there and did not have a title but said they insisted she write something so she wrote owner, VP referring to her co-ownership of World Harvest Dental, Inc. which is the corporation name of her husband's practice and she is listed as Vice President. She stated she has not worked at her husband's practice nor had anything to do with it since the probation order went into effect. The State asked Mrs. Leonard if there is currently an office manager or anyone else who could have assisted the auditors. She said there was an office manager who was present and a dental assistant would have had some knowledge of the files but no one knew the details she did. When asked what would happen if the audit went badly she stated she was not sure but it seemed that if the claim does not exactly match the chart then Medicaid will recoup the money that was paid. She stated she does not know how the auditors learned of the probation order or why they turned her in for being there when they knew she was only there to assist them and no mention of it was made at that time. The Respondent was called as a witness and he testified he too did not think about the fact that it was a violation of his probation order for his wife to be there during the audit. He stated his wife had not worked at his practice in any way except for that time and that he was there seeing patients during that time but did leave early the first day to pick-up their son from school when he was sick. He told the Board his prescription pads were in the exam rooms and his wife was in an office in the back. Both the Respondent and Mrs. Leonard stated she was there in good faith and it would not happen again.

Board Action: A motion was made and seconded to issue the following Order for failure to comply with the probationary order:

- 1. The Respondent shall pay a fine of five hundred dollars (\$500.00) to the Indiana Professional Licensing Agency no later than the date of his next quarterly personal appearance before the Board.
- 2. The Respondent shall complete sixteen (16) hours of community service at a location approved by the Board and provide written verification of completion of the community service hours to the Board no later than the date of his next quarterly personal appearance before the Board.
- 3. The Respondent shall remain on indefinite probation and shall comply with all terms and conditions stated in the order of probation issued on November 29, 2005, as amended by the order issued on March 30, 2007.
- 4. The failure of the Respondent to comply with the requirements of probation will subject him to a show cause hearing before the Board and the imposition of further sanctions, including suspension or revocation of his license.

HALLER/NEWTON

Motion carried 9-0-0 Dr. Williams recused himself

E. State of Indiana v. Daniel Fink, D.D.S., License No. 12007602A

Administrative Cause No. 2006 DB 0006

Re: Emergency Suspension and Final Hearing

Parties and Counsel Present:

Respondent was present and was represented by Counsel Terry White Mark Mader, Deputy Attorney General for the State of Indiana Felicia Warren, Court Reporter

Participating Board Members:

Dr. Burns (Hearing Officer)

Ms. LaTurner

Dr. Newton

Dr. Miller

Dr. Heape

Dr. Hollar

Dr. Catev

Dr. Rokita

Dr. Halter

*Dr. Williams recused himself

Case Summary: The State presented the Board with a proposed settlement agreement since the Respondent acknowledged, through counsel, that he does not wish to contest the allegations contained in Count I, Count II, Count IV, Count VI, Count VIII, Count XI, and Count XV of the Amended complaint filed July 13, 2007. The proposed agreement would place the Respondent on Indefinite Probation for a period of ten (10) years subject to the following terms and conditions:

- 1. The Board has subject matter jurisdiction.
- 2. The parties and their respective counsel execute this Agreement voluntarily.
- 3. The Petitioner and Respondent voluntarily waive their rights to a public hearing on the Complaint and all other proceedings in this action to which, either party may be entitled by law, including judicial review.
- 4. Petitioner agrees that the terms of this Agreement will resolve any and all outstanding claims or allegations or potential claims or allegations relating to disciplinary action against Respondent's license arising out of facts and circumstances surrounding the Complaint filed herein.
- 5. Respondent agrees to an Indefinite Probation of his license for a period of ten (10) years in this matter. After five (5) years of successful probation, Respondent may petition the Board for his probation to be withdrawn.
- 6. The Respondent will follow all rules and regulations of the dental profession.
- 7. The Respondent will appear before the Board monthly for the first six months of his probation to report on his current status. The Respondent may petition the Board after the first six (6) months of probation to appear on a quarterly basis for the next five (5) years and thereafter semi-annually.
- 8. The Respondent has an affirmative duty to notify the Board monthly of any prescription medications that he is consuming. Any prescription medications

will need to be documented by the Respondent's physician and submitted to the Board in writing.

- The Respondent will obtain a supervising on-site monitor to be present during such times as the Respondent is practicing dentistry who will oversee his practice for the first three (3) years of his probation. The on-site supervising dentist will submit monthly reports for the first year of his probation and quarterly reports thereafter. The on-site supervising dentist will conduct a private quarterly review with each staff member for the first year and annually for the remainder of the Respondent's probation. After three (3) years of successful reports, the Respondent may apply for the supervising dentist to report to the Board on a semi-annual basis. The supervising on-site dentist must be approved by the Board or the Board's appointed designee. After three (3) years of successful onsite supervising dentist reports, the Respondent may petition the Board to modify his on-site supervising dentist requirement. The on-site supervising dentist will issue reports to the Board which address: (1) the appropriateness of the Respondent's conduct as it relates to sexual boundary issues regarding patients and staff and (2) any such other matters as he or she deems would be important to the Board. It is the Respondent's responsibility to ensure that his supervising on-site dentist turns in reports to the Board on a timely basis.
- 10. Failure to comply with this Order may result in the State requesting an emergency suspension of Respondent's license, as well, as possible reinstatement of the initial action giving rise to this resolution; an Order to Show Cause as may be issued by the Board; or a new cause of action being filed pursuant to Indiana Code § 25-1-9-4(a)(l0), any or all of which could lead to additional sanctions, up to and including a revocation of Respondent's license.
- 11. The on-site supervising dentist will be guided by Appendix A which will be attached to this Order and outlines any additional criteria to be included in his or her report to the Board.
- 12. The Board has continuing jurisdiction in this matter.

Board Action: A motion was made and seconded to accept the settlement agreement as amended.

MILLER/NEWTON
Motion carried 9-0-0
Dr. Williams recused himself
Ms. Whitmore, L.D.H., B.S. was not present

Board Action: A motion was made and seconded to accept the additional criteria to be included as "Appendix A" of the Final Order.

- Evaluate Dr. Fink's general attitude toward staff and patients.
- Evaluate Dr. Fink's professionalism and ethics.
- 3. Report whether Dr. Fink has been in a room with a patient without a staff member present. If he has, explain the circumstances.
- Report whether Dr. Fink has been in the office with staff members or patients when the supervising dentist was not present. If he has, explain the circumstances.
- 5. Provide any additional information that the Indiana State Board of Dentistry may request through written correspondence with the supervising dentist.

HOLLAR/NEWTON
Motion carried 9-0-0
Ms. Whitmore, L.D.H., B.S. was not present

Dr. Williams recused himself

VII. SETTLEMENT AGREEMENTS

There were no settlement agreements before the Board.

VIII. NOTICE OF PROPOSED DEFAULT

There were no Notices of Proposed Default before the Board.

IX. OLD/NEW BUSINESS

A. Assignment of Tasks to Board Members

- Dr. Burns explained to the new members of the Board that each member is assigned a certain task to specialize in. She asked the new members to volunteer to handle the following items.
- Lapsed Licenses and what type of remediation may be necessary for those who have been out of practice and wish to return. Dr. Haller agreed to work on this.
- 2. Arranging for a dental board meeting to be held at the Indiana University School of Dentistry so that the students can get exposure to the Board and what they do. Dr. Hollar agreed to work with Dr. Willis at the school to get this accomplished. Dr. Hollar will also see to it that the directors of dental hygiene programs are invited as well.
- 3. Investigate the issue of whitening being done in the spas and grills in shopping malls. The Dental Board cannot officially do anything since these people are not licensed dentists but this issue is very contentious. Dr. Rokita agreed to write letters and speak with people in government to see how the Dental Board can make an impact.
- 4. The Statutes and Rules will need updating with new guidelines in the following areas: Anesthesia and Sedation will be done by Dr. Miller; Mobile Dental Facilities will be done by Dr. Heape; Advertising will be done by Dr. Newton; and Renewals, Delinquent Fees, and OSHA will be done by Dr. Catey.

X. DISCUSSION

- A. Ms. Vaught told the Board she was contacted by a Dr. Jordan who claims a past board led by Dr. De LaRosa created a form which allowed recent dental school graduates who have failed the National Boards to work with his school based programs providing dental care to kids. The Board is not aware of such a program being conducted, Ms. Vaught has no knowledge of this application form, and the law doesn't seem to allow anything like this as all persons obtaining a permit to do anything needs to have passed the National Board examination. Ms. Vaught is going to contact Dr. De LaRosa to try and get more information.
- B. All Board members were given a packet from Dr. Keith Roberts which included the Indiana Dental Association's best management practices and other items. Dr.

Roberts has issues he would like to speak with the Board about but will need to be placed on the agenda so the Board reviewed these items on their own.

C. Continuing Education

Dr. Williams told the Board he has reviewed the list of "automatically approved" sponsors of continuing education as defined in IC 25-1-4 and feels it is very broad but understands it is the practitioner's responsibility to seek programs given by approved sponsors which pertain to the practice of dentistry and would be acceptable according to the laws of Indiana. He spoke with Jay Dziwlik of the Indiana Dental Association about comprising a list of specific programs that would be posted on the IDA website. The purpose would be to help quide practitioners towards sound programs. Ed Popcheff of the Indiana Dental Association addressed the Board with their concerns that posting a list on their website could lead practitioners to believe the IDA is endorsing those programs and they do not want to appear to endorse programs that they do not have experience with. It could also anger some local dental societies who might view that list as competition. The IDA feels if such a list were developed that it should go on the state website and they would provide a link to it on theirs. Dr. Newton stated he felt comprising a list would be too difficult a task as it would change so often. He wrote a general statement which he read aloud to the Board that would serve as a reminder to dentists and dental hygienists what they need to do and things to look out for that may not be allowable practices under the law. The Board approved of Dr. Newton's statement.

XI. APPLICATION REVIEW

A. Endorsement

There were no endorsement applications for the Board to review.

B. Examination

There were no examination applications for the Board to review.

C. Anesthesia and Sedation Permits

There were no anesthesia and sedation permits.

D. Dental Intern Permit

1. Robert Angerman, D.D.S.

The Board reviewed the application file for Dr. Angerman who wishes to obtain a dental intem permit in order to be a clinical instructor at Indiana University Northwest's Dental Hygiene program. Dr. Angerman was licensed to practice in Indiana but let it expire when he fell ill and has not practiced since 2000. Dr. Angerman does have a positive response on his application regarding a previous malpractice settlement. Ms. Vaught asked the Board if she can issue the dental intern permit or if they would like him to make a personal appearance. The Board determined they would like Dr. Angerman to make a personal appearance to ask him in more detail what he will be doing as a clinical instructor.

E. Professional Corporations

There were no professional corporation applications to review.

XII. PROBATIONARY REPORT

A. Penelope Lynn Dunlap, D.D.S.

Monitoring reports from Dr. Joseph W. Hake was reviewed and accepted. Reports from Dr. Hake are now required on a monthly bases. Dr. Hake stated that it is no longer feasible to review all charts. He plans to review approximately twenty (20) charts at each review plus any additional cases that Dr. Dunlap may want to discuss. Dr. Dunlap has paid her fine and costs which totaled \$11,448.02 to the Board. She was also ordered to pay the Office of the Attorney General's costs in the amount of \$2055.60 for which she submitted proof of compliance. Proofs of completion of twenty (20) hours of community service at the Carnegie Public Library were submitted. Proof of completion of twenty (20) hours of continuing education was submitted. Dr. Dunlap submitted a copy of the letter sent Dean Goldblatt requesting to speak with the students at Indiana University. This term has not been completed as of this date. Dr. Dunlap requested the Board to clarify what they would like her to discuss and did they want to approve any material that would be presented. The Board requested that a response to Dr. Duniap's request regarding speaking at Indiana University be completed and that according to her probationary order "all aspects must be monitored. If Dr. Dunlap wants her order to be modified she will need to request an administrative hearing. The order states that he must monitor all aspects of the practice.

B. Christopher Leonard, D.D.S.

Dr. Leonard's monthly report from the Indiana Dental Association Wellness Program was reviewed and accepted. He is in compliance with his probationary order.

C. Jim D. Frankos, D.D.S.

Dr. Frankos' monthly report from the Indiana Dental Association Wellness Program was reviewed and accepted. He is in compliance with his probationary order. His next appearance will be scheduled for April 2008.

D. James Cahillane, D.D.S.

Dr. Cahillane monthly report from the Indiana Dental Association Wellness Program was reviewed and accepted. He is in compliance with is probationary order.

E. Bland Walker, D.D.S.

Dr. Walker's monthly report from the Indiana Dental Association Wellness Program was reviewed and accepted. Dr. Walker is in compliance with his probationary order.

XIII. CONTINUING EDUCATION

There was no continuing education for the Board to review.

XIV. REPORTS

There were no reports given.

XV. ADJOURNMENT

There being no further business, and having completed its duties, the meeting of the Indiana State Board of Dentistry adjourned at 4:00 p.m.

Jill Burns, D.D.S., President

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Galen Williams, D.D.S, Secretary

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